IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 3877 of 2017
With
CRR 3881 of 2017
With
CRR 3884 of 2017

Om Prakash Saxena & Others
Vs.
The State of West Bengal & another

For the Petitioners	:	Mr. Pawan Kumar Gupta Mr. Awadesh Kumar Rai Ms. Sofia Nesar Mr. Santanu Sett
Heard on	:	07.07.2025
Judgment on	:	18.07.2025

Dr. Ajoy Kumar Mukherjee, J.

1. Petitioners herein have challenged the impugned proceeding being case no. C/372 of 2016 initiated under section 14(1)/14(1A)/14(1B)/14(2A)/14AA of the Employees Provident Fund & Miscellaneous Provisions Act,1952 presently pending before learned Judicial Magistrate, Barrackpore.

2. The petitioners used to run a company under the name of Bengal Waterproof Ltd. but the production of the company was suspended in 2011. The company had formed a trust for management of the provident of the staff and workers and obtained exemption form appropriate authority vide notification no. 1944-LW/1A-224/58 dated 31.12.1959. Said trust was stated to be formed to facilitate the Provident Fund authority to directly deduct the amount from such fund and company's liability was stated to be there only to submit the return of such deduction within a stipulated period of time.

3. Complainant herein filed the instant three cases against company for non-submission of return within time.

4. Mr. Gupta, learned counsel appearing on behalf of the petitioner submits that the complainant had initiated total 82 cases with the allegation of non-submission of return, which could have been filed through a single complaint. However it is not a case of non-submission of provident fund amount before the provident fund authorities and as such it cannot be treated as a continuing offence. His further case is till 2016 Rs. 7,74,58,564/- is already lying under Special Deposit Scheme in company's Trust Account as per aforesaid notification having exemption code M/s Bengal Waterproof Ltd. code WB/664. It is not in dispute that factory remained non-operational after 2011 and all the employees resigned in November 2011. There appears to be no dispute that time to time payment of PF settlement from Special Deposit Account in respect of outgoing employees were obtained from EPFO. On payments made to the employees, utilization certificate was submitted to EPFO along with details of payment.

The instant case has been initiated on a mere allegation of non-submission of return within time.

5. Mr. Gupta in support of petitioner's contention further submits that a writ petition no. W.P 15191 (W) of 2011 was filed by petitioner/company against the PF authorities challenging the illegal assessment of contribution towards PF and this High Court granted interim order of status-quo and had restrained the PF authority form giving effect and/or further effect to the orders dated June 15, 2011 and July 4, 2011 passed by it and certificate dated September 8, 2011 without the leave of the court and infact such order of High Court resulted in non-submission of the return subsequently for respective months. Mr. Gupta further contended that complaint is silent regarding the specific role played by each of the accused persons/petitioners. However the trial court without having any application of judicial mind took cognizance and before issuing process he even did not bother to consider about the compliance of mandatory provision laid down under section 202 of the Code of Criminal Procedure. Accordingly Mr. Gupta prayed for quashing the vexious proceeding as nothing could be achieved due to continuance of further proceeding, in view of the fact that payment of all employees were made after their resignation.

6. Inspite of service of notice upon the opposite party they preferred not to contest the present application.

7. I have considered submissions made by the petitioner.

8. ***Bhagirath Kanoria & Ors. Vs. State of M.P. & Ors.*** reported in **(1984) 4 SCC 222** the Apex court made it clear that the offence namely non-payment of the employers contribution to the provident fund before due date is a continuing offence. However as decided by several High Courts that failure to furnish return before the due date is not a continuing offence and must be confined to cases of failure to furnish returns. In a similar circumstances a coordinate Bench of this court in ***Kartick Chandra Das and Ors. Vs. State of West Bengal*** quashed twelve similar cases observing that there is no denial on the part of the opposite party/complainant that the concerned establishment was closed before the date of filing of the petition of complain. Since it is their specific case that all the dues of the employees were released in favour of the employees which had been accepted also by the authority under the Act, it is meaningless to chase for the returns. In such a situation the co-ordinate bench of this court held that further continuance of the criminal proceeding would be nothing but harassment to the petitioners and it would also tantamount to misuse of the judicial process of the court.

9. Mr. Gupta in this context referred three judgements passed by coordinate Benches of this court in CRR 3262 of 2017 with CRR 3263 of 2017, decided on 21.09.2023, CRR 3764 of 2017 decided on 06.12.2024 and another case being CRR 3882 of 2017 decided on 30.04.2025. Said three judgements disposed of eight cases of similar nature wherein the allegation against the petitioners was that they failed to submit monthly returns under the provision of Employees Provident Fund scheme 1952. In the said judgments, co-ordinate Benches of this court have observed that admittedly the employees of the said establishment had forwarded there resignation in the year 2011. The employees have received their provident fund and there is no dispute over the same. The factory of the establishment became nonfunctional since 2013. At this juncture searching of periodical return by the said establishment would be nothing but a futile exercise.

10. It is well settled that to ensure judicial discipline, the opinion expressed by an earlier bench of co-equal strength is binding upon the subsequent Bench of co-equal strength, unless the subsequent bench express an opinion doubting the correctness of the view taken by the earlier Bench of co-equal strength and only in that case of expressing doubt the matter may be placed before a larger Bench for deciding the correct proposition of law. In the present case in view of aforesaid similar unchallenged facts and circumstances of the case, there appears to be no room for any amount of doubt over the observations made by the co-ordinate Benches of this court in the above mentioned three judgments.

11. Mr. Gupta in the course of argument also drawn my attention to one deliberation and recommendation of the ad-hoc committee on coverage and related litigation published by Employees Provident Fund Organization in July 2022 wherein the committee noted that several prosecutions are going on in respect of default for non-filing of returns and non–submission of KYC and therefore the committee recommended that the Board may consider the proposal to review the cases to withdraw prosecutions related to non-filing of returns and/or non-submission of KYC.

12. In view of aforesaid facts and circumstances of the case and also relying upon the observations made by co-ordinate Benches in the earlier judgments and that the alleged offence is not a continuance offence, I find that further continuance of the present proceeding will be a mere abuse of the process of the court. In such view of the matter CRR 3877 of 2017, CRR

3881 of 2017, and CRR 3884 of 2017 are allowed. Concerned impugned proceedings being case no. C/372 of 2016, case no. C/373 of 2016 and the proceeding being Case no. C/367 of 2016 presently pending before learned juridical magistrate 1st court, Barrackpore thus stands quashed.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)